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CLEARINGHOUSE RULE 98-205

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

The analysis and SEC. 1 of this rule cite s. 49.155 (1g), Stats., as statutory authority for the rule. That provision governs the distribution of child care funds for various purposes related to the Wisconsin Works (W-2) Program. That provision makes no mention of rules, nor do any other provisions relating to the W-2 Program require promulgation of rules regarding distribution of child care funds. Therefore, it is suggested that the department retain the cite that was deleted in SEC. 1, to s. 227.11 (2), Stats., which confers general rule-making authority on state agencies. Specifically, the reference should be to s. 227.11 (2) (a), Stats. The note following s. 1.02 (2) (a), Manual, states that if the only source of authority an agency can cite is the general s. 227.11 (2) (a) authority, the agency should also cite the specific statute or statutes relating to the rule’s substance. Therefore, it is appropriate to retain the cite to s. 49.155 (1g), Stats.

2. Form, Style and Placement in Administrative Code

a. In the treatment clause to SEC. 10, the “(3)” in the citation “(3) (b) 1.” should be deleted. The same comment applies to the second “(3)” in the treatment clause to SEC. 11 and to the second “(4)” in the treatment clause to SEC. 12. Also in the treatment clause to SEC. 12, a period should be inserted after the “1”.

b. SECTIONS 20 and 21 could be combined into a single SECTION, as they contain two subsections of the same rule section which are affected by the same treatment. [See s. 1.04 (2) (a) 4., Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section 1.02 (2) (b), Manual, provides that the plain language analysis to a rule should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules. The analysis to this rule would be improved if it contained additional information in the following areas. First, the second paragraph states that numerous changes are made to reflect the statutory changes affecting child care programs. However, no example of the “numerous changes” are given. Second, the third paragraph of the analysis states that the definition of the term “family” is changed in this rule. However, no explanation is provided as to why the change is being made. Third, a number of provisions of current ch. DWD 56 are repealed entirely in this rule. The analysis should include brief mention of the provisions repealed and the rationale for their repeal.

b. In the fourth paragraph of the analysis, it appears that the last word should be “provider.”

c. In s. DWD 56.02 (10) (a), the terms “kinship care parent” and “treatment foster parent” are used without definition. Those terms are not defined in current ch. DWD 56, nor in the two relevant definitions provisions in ch. 49, Stats. [ss. 49.001 and 49.11, Stats.] The term “kinship care relative” is defined in s. 48.57 (3m) (a). Perhaps that term could be used and reference could be included to that statutory provision. There does not appear to be a statutory or rule definition of “treatment foster parent.”

d. Section DWD 56.02 (10) (b) uses the term “nonmarital co-parent” without definition. Reference could be included to the statutory definition of that term in s. 49.141 (1) (i), Stats. Also, the term “co-parent” is hyphenated in par. (b), but not in par. (d) of s. DWD 56.02 (10). Since the term is not hyphenated in the statute, it should not be hyphenated in the rule.

e. In s. DWD 56.02 (17), for consistency with the statutory definition of “parent” in s. 49.155 (1) (c), the word “custodial” should be inserted prior to the first occurrence of “parent” on line 2. Also, should a kinship care parent be included in the definition of “parent” in this rule? Note that a kinship care parent is included in the definition of “family” in sub. (10) (a).

f. In s. DWD 56.02 (24), the note should conclude with quotation marks.

g. In s. DWD 56.04 (3) (b) 1., the phrase “orientation” should be inserted after the word “training” on line 2.

h. The last sentence of s. DWD 56.04 (4) (a) states that a child care administrative agency *shall* offer vouchers to each parent approved for child care funding. This unequivocal statement appears to conflict with the language in s. DWD 56.04 (4) (b) 1. a., which states that a child care administrative agency shall offer a voucher to each eligible parent *to the extent that*

funds are available. These two statements appear to be inconsistent and should be reviewed and reconciled.

i. In s. DWD 56.04 (4) (e), should the word “or” be inserted after the word “services” on line 2? As currently written, this sentence does not make sense. Also, the word “tribe” should be replaced by the word “tribal.”

j. The first line of s. DWD 56.05 (1) replaces the phrase “county and tribal agency” with the phrase “child care administrative agency.” However, on line 3, the phrase “county or tribal agency” is retained. Should that phrase be replaced by “child care administrative agency,” which is defined in s. DWD 56.02 (3) as a county agency, a tribal agency or any other agency which has a contract with the department to administer child care funds? Alternatively, is it the department’s intent that only a county or a tribal child care administrative agency, but not another agency which contracts with the department to administer child care funds, be permitted to subcontract for administration of child care funds with the approval of the department?

k. In SEC. 17, s. DWD 56.05 (5) is repealed. That provision required a county to establish a waiting list for parents who could not be accommodated by available low-income child care funds under s. 49.132, 1995 Stats. Is it the department’s intent that waiting lists will no longer be kept under the W-2 child care program whose funds are administered under s. 49.155 (1g)?

l. In SECS. 24 and 26 respectively, s. DWD 56.08 (2) (a) and (c) are repealed. With the repeal, the only remaining language in sub. (2) is in par. (b), which states that “this subsection” applies to all parents who receive child care financial assistance under s. 49.175 (1) (o), Stats. Since there is no other remaining language in sub. (2), the meaning of this provision is unclear. Is the intent that the parent copayment responsibilities delineated in sub. (1) and the adjustments to the copayment schedules set forth in sub. (3) are to be applicable to all parents who receive child care financial assistance under s. 49.175 (1) (o), Stats.? If so, the language currently in sub. (2) (b) would more logically come at the beginning of s. DWD 56.08, so it is clear to which families the copayment language applies.